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C O N F I D E N T I A L SECTION 01 OF 02 BANGKOK 000172

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E.O. 12958: DECL: 01/15/2018
TAGS: [PGOV](#) [PHUM](#) [PREL](#) [KDEM](#) [TH](#)
SUBJECT: SUPREME COURT TO RULE ON ELECTION CHALLENGES

REF: A. BANGKOK 156 (WINNERS RUMORS)

- [1](#)B. 07 BANGKOK 6226 (TOP FIVE THINGS)
- [1](#)C. 07 BANGKOK 6182 (RECORD-SETTING ADVANCE VOTE)
- [1](#)D. 07 BANGKOK 151 (PRASONG)

Classified By: Deputy Chief of Mission James F. Entwistle, reason 1.4 (b) and (d).

[1](#)1. (C) SUMMARY: The Supreme Court will rule on Friday on complaints challenging the legality of the December 23 elections. The most vulnerable point may be the advance voting, which some claim was unconstitutional. One legal expert said it was "50/50" whether the Supreme Court would void the advance voting results, but a former Election Commissioner told us it was unlikely. Even most of those strongly opposing the prospect of the pro-Thaksin party forming the next government do not appear to be agitating for the Supreme Court to intervene, and this case does not appear to be part of any conspiracy. It does underscore that the ECT and other officials may not fully understand the new constitution and other laws, and this will further complicate the transition back to an elected government. End summary.

[1](#)2. (C) The Supreme Court has announced that it would rule Friday, January 18 on several challenges to the legality of the December 23 parliamentary election (ref A). A Democrat Party candidate petitioned the court for judicial review on four points:
-- is People's Power Party (PPP) a "nominee" of the dissolved Thai Rak Thai party, and if so, should it have been allowed to compete in the election?
-- is PPP leader Samak a "proxy" for former PM Thaksin, and if so, should he be prohibited from fulfilling the responsibilities of party leader?
-- was the distribution of VCDs showing former PM Thaksin endorsing the PPP a violation of election law which make the election unfair?
-- was the advanced voting, held on December 15 and 16, valid and if not, should the advance voting or the election itself be voided?

"50/50"

[1](#)3. (C) Two knowledgeable contacts had quite different views on the likely impact of the Supreme Court case. Distinguished jurist Borwornsak Uwan, meeting with Ambassador and staffdel Grove on January 16, noted that the convening of Parliament and the naming of a new government could be delayed if the Supreme Court ruled that there were problems

with the advanced voting. He estimated the chances as "50-50" whether the Court would rule that the advance voting was improper. Borwornsak said that there had been no malicious intent on the part of the Election Commission (ECT) in organizing the advance vote, "but it is not allowed" by the Constitution, (which states that the election must be held on the date specified in the Royal decree, and be on the "same date throughout the Kingdom.") Borwornsak did not appear to believe that the Supreme Court would consider voiding the whole election; rather he suggested that it might require that only the advance vote be voided. This would necessitate a nation-wide recalculation of election results and possible redistribution of seats. (As reported, there was a unprecedented turnout for the advance voting, with nearly 3 million voters turning out - ref C). Borwornsak seemed primarily concerned about the advance voting issue, and did not raise concerns about the claims targeting PPP specifically.

14. (C) Borwornsak added that some opponents of the PPP might see an advantage to delaying the new Parliament, as certain political figures are working behind the scenes to try to engineer a grand coalition government including both the PPP and Democrat Parties. (He named Prasong Soonsiri, self-confessed conspirator in the September 2006 coup - ref D) He also said, however, that there would be little support, even among PPP opponents, for any outcome that left the ineffective Surayud government in place for several more months.

ON THE OTHER HAND...

15. (C) Former election commissioner Gothom Arya told us that
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it was unlikely that the Supreme Court would intervene in the election. First of all, he thought that the cases would more properly be considered by the Constitutional Court. Second, he said that advance voting had been held in the past without objection (albeit under a different constitution and set of laws). Finally, he said that the courts in previous rulings had deferred to the ECT as having extensive authority to manage the conduct of the election.

HOT POTATO?

16. (C) Contacts at the Supreme Court will not venture to guess how the judges will decide this case, nor to speculate on the legal arguments involved. They did note that the Supreme Court cannot rule to dissolve a party; that is the jurisdiction of the Constitutional Court. It appears that one possible outcome on Friday is for the Supreme Court to issue an order to the ECT requiring it to submit some or all of these issues to the Constitutional Court for review which could delay the the entire government-formation process.

COMMENT

17. (C) If the Supreme Court determines that the advance voting was improper, there are really no good solutions for the embattled ECT. About nine percent of total vote took place on the advance voting days, and it would not be widely acceptable to disenfranchise those citizens, particularly if the decision led to significant changes in the winners and losers. It is hard to understand how the advance voting could have been organized without someone noticing it was unconstitutional; it has been a recurring problem, however, that officials are unfamiliar with the new legal and constitutional framework (and sometimes not all that familiar with the details of the old framework). This does not appear to be part of any considered plan on the part of the military or current government to disrupt the seating of the new Parliament, and anti-Thaksin advocates are not putting public

pressure on the court to take a tough stance. But this case could further complicate the return to elected government and perhaps undermine the confidence of the people in the democratic process.

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